87-1280

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

DAVID C. LUNGLEY

Petitioner,

vs.

COUNTY OF LOS ANGELES; JAMES C. HANKLA, Chief Administrative Officer of the County of Los Angeles; MARTIN GOLDS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DAVID C. LUNGLEY, Pro Se
1737 Sunset Plaza Drive
Los Angeles, CA 90069

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QUESTIONS PRESENTED

1. Whether petitioner, a male secretary, in bringing an action under Title VII of the Civil Rights Act of 1964 for sex discrimination may rely on a conspicuous absence of male secretaries in the executive work force to make a prima facie showing of discrimination resulting from subtle, societal norms?

2. Whether the state, district and appellate courts in direct conflict with this Court's decision in Johnson v. Transportation Agency, Santa Clara County, California, et al., 480 U.S. __, 94 L.Ed. 2d 615, 108 S.Ct. __ (1987), and in conflict in principle with other decisions of this Honorable Court, erred in summarily dismissing petitioner's prima facie showing of sex discrimination based on a conspicuous statistical imbalance in the work force where respondents failed to proffer any reasonable rebuttal for the imbalance?

List of Parties

The parties to the proceedings below were Petitioner, David C. Lungley, pro se, and respondents, the County of Los Angeles, et al. Both parties are before this Court.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, David C. Lungley, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on August 28, 1987, and in which Petition for Rehearing was denied on October 7, 1987.

//////

OPINIONS BELOW

The opinion and order of the United States Court of Appeals for the Ninth Circuit of which review is sought are unpublished and are reproduced in the Appendix hereto at pages 1a-6a.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit rendered judgment against petitioner on August 28, 1987 by Memorandum. Rehearing was sought on September 18, 1987, but denied on October 7, 1987 and this petition for certiorari is filed within 90 days from the date of denial pursuant to Supreme Court Rule 20.2,.4.

This Court's jurisdiction arises pursuant to 28 U.S.C. Section 1254(1) (1976) and 28 U.S.C. Section 1257(3), in that the decision of the Ninth Circuit creates a conflict in the decisional law of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This action is based on Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. The applicable provision states

in part:

> "Section 2000e-2. Discrimination because of race, color, religion, sex, or national origin
>
> (a) Employers. It shall be an unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; . . ."

42 U.S.C. Section 2000e-2(a)(1) (1982).

United States Constitution, Amendment XIV, in relevant part:

> "SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> ". . . ."

STATEMENT OF THE CASE [1/]

I. Facts and Background

Petitioner, David C. Lungley, a 57 year-old male Secretary Five (formerly Intermediate Stenographer Secretary) was employed by respondents, the County of Los Angeles since 1970. In 1972 petitioner entered the County's secretarial field with union (Local 660) assistance. [See Appellee's Supplemental Excerpt of Record, Exhibit 2 at 21-25.] Despite outstanding skills, performance evaluations and rank-one placement (95 scores) in all secretarial examinations, petitioner encountered difficulty in achieving promotions to upper-level secretarial positions, where males have traditionally been underrepresented and excluded [See A.S.E.R. Exhibit 3 at 26.] In 1984 when petitioner brought his action in the Civil Service Commission and in the superior court in 1985, there was a glaring absence of male

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1. Key to abbreviations used in the text:
   - A.O.B. - Appellant's Opening Brief
   - A.S.E.R. - Appellee's Supplemental Excerpt of Record
   - R.T. - Reporter's Transcript on Appeal

secretaries in the work force. The statistics were as follows: (1) Zero males secretaries at the executive level out of 266; (2) 2 male secretaries at the Five level out of 499; and (3) 9 male secretaries out of 928 positions. [See A.S.E.R. Exhibit B at 31.]

In 1984 petitioner ranked one (95 scores) for all County secretarial positions, but was denied the right to interview and compete for three high-level positions solely on account of his sex.

Petitioner was previously informed that candidates were restricted to the Department of Personnel. [See A.S.E.R. Exhibit B at 36 and 37 (petitioner's objections to Civil Service Commission's findings)]. The record on file demonstrates that petitioner was denied the right to interview and compete for these three executive positions solely because of his sex. However, as evidence of the discrimination, the record below indicates that lesser-qualified and ineligible females from other departments, including his own (Chief Administrative Office) were allowed to interview

and compete. [See A.S.E.R. Exhibit B at 3
and 36.] Further, no other males, though
eligible, were allowed to interview and co
[See A.S.E.R. Exhibit 1 at 17-20--Ron Monf

On July 15, 1985, by way of Petition
Writ of Administrative Mandate in the Supe
Court of the State of California, petition
sought judicial review of the Civil Servic
Commission's decision on the issues of the
County's discriminatory selection process
promotional practices for two executive
appointments : Senior Secretary Five and
Management Secretary Four; and his prima f
showing of sex discrimination based on a
conspicuous statistical imbalance of male
secretaries in the work force. [See A.S.E
Exhibit C at 47.]

On January 17, 1986, petitioner timel
filed his complaint [see A.O.B Excerpts fr
Clerk's Record at 1-9] and his right-to-su
letter [see A.S.E.R. Exhibit A at 15-18.]
the Federal District Court for the Central
District of California charging the County

sex discrimination and emotional distress; arguing that the County's selection and promotional practices to promote less-qualified and ineligible females to three executive positions--but now including the Management Secretary Five position which was not at issue in petitioner's Civil Service Commission hearing nor in petitioner's superior court writ of mandate. [See Appellant's Opening Brief Excerpts from Clerk's Record at 20 and 21, partial R.T. of the District Court's proceedings.] [App. 13a hereto.] and his prima facie case of conspicuous absence of male secretaries in the executive work force, violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e et seq.

On February 23, 1987, petitioner filed his opening brief in the United States Court of Appeals for the Ninth Circuit appealing the state and district court's dismissal on the grounds that: (1) the state court erred in not taking judicial notice of petitioner's prima facie showing of sex discrimination

based on a conspicuous statistical imbalance of male secretaries in the work force as warranted in prior Supreme Court decisions pursuant to Johnson and Weber, infra. In Appellant's Opening Brief in pertinent part at pages 11 and 12:

" . . . . "

> "The Honorable Judge John L. Cole made light of and adopted an overly restrictive view (Exhibit I) on the conspicuous male-female imbalance in the Los Angeles County's secretarial work force-- 9 low-level male secretaries out of 920 females (C.R. 10 . 23.)--one of the principal issues to plaintiff in this case. In Johnson v. Transportation Agency, Santa Clara County, Calif. 748 F. 2d 1313 (1984): 'Statistics are extremely useful in showing conspicuous work force imbalance. We noteparticularly the difficulty that may confront and [sic] employer whose plan is intended to remedy discrimination resulting from societal norms. Some forms of discrimination are so subtle or so accepted that they defy proof other than by statistics. In Weber, the exclusion of blacks from craft unions was so pervasive as to warrant judicial notice. Weber, 443 U.S. at 198 n.1., 99 S.Ct. at 2725 n.1.'"

"The Civil Service Commission adopted the findings of the hearing officer's report (C.R. 10 p.31) which states:

> '6. There are only two male secretaries out of 499 at the level of Secretary V [plaintiff'sitem] and above, and none are curently higher than Secretary V.'"
>
> "Notice in plaintiff's secretarial classification as evidenced in his Civil Service transcript and exhibits before Judge Cole, the glaring statistical disparity based on his transcript and Robert A. Arias' Affirmative Action Compliance Officer's investigative report of August 1984 (appellant's C.S.C. Exhibit #9) (C.R. 6pp. 68-73.) shows: (1) A conspicuous imbalance of males great enought to make out a prima facie case of sexual discrimination; (2) a requirement for an affirmative action plan designed to break down entrenched patterns of discrimination (such as plaintiff's) to remedy the underrepresentation of males; (3) a subtle rejection of males where the numbers are few, creating a long-standing sexual segregation in the secretarial work force. (C.R. 6 pp.55-65)."

(2) the County's discriminatory selection and promotional practices in the guise of an affirmative action plan did not satisfy the requirements of prior Supreme Court decisions as in Johnson [see A.O.B. at 20 and A.O.B. Excerpts from Clerk's Record at 31-33]; and (3) the Management Secretary Five position was not at issue in petitioner's Civil Service Commission hearing [see A.O.B. Exhibit IV at 46,

partial R.T. of the Civil Service Commission hearing [App. 17a hereto.]; and A.S.E.R. at 47, writ of mandate.] Therefore, the district court erred in inappropriately collaterally estopping the Management Secretary Five issue which was, as the record shows, never "actually or fully" litigated in prior action and though effectively raised, petitioner never had a fair opportunity procedurally, substantively and evidentially to contest the issue. See Overseas Motors, Inc. v. Import Ltd Inc., 375 F.Supp. 501 [A.O.B. at 10 and 11] also, Kremer v. Chemical Constr. Corp., (1982 U.S.) 72 L.Ed. 2d 834, Section 11. See petitioner's petition for rehearing at 1 and 2.

/ / / / / /

II. Decisions Below

A. The Superior Court's Decision

The Superior Court of the State of California by judgment filed September 23, 1985 denied petitioner's Petition for Peremptory Writ of Mandate and Discharge of Alternative Writ based on the ground that petitioner's case was, " . . . based almost a thousand percent on statistical information . . . . That is your case and the issue legally is whether those statistics would support a conclusion in the court's independent judgment that the County was engaged in some form of discrimination against male secretaries." [App. 8a-10a hereto.]

B. The District Court's Decision

The Federal District Court for the Central District of California by Order of Dismissal entered June 10, 1986, dismissed petitioner's federal and state claims for relief for employment discrimination in 1984 by collaterally estopping petitioner from relitigating

the issues of discrimination based on his male sex as finally determined by the Los Angeles Superior Court Case No. C556 346. [App. 13-14a]

C. The Court of Appeal's Decision

The Ninth Circuit Court of Appeals by Memorandum filed August 28, 1987, affirmed the district court's Order of Dismissal, holding in part that the October 1984 promotion of the Management Secretary Five position was at issue in the Civil Service Commission proceedings and in the superior court. [App. 1a-5a hereto.]

REASON FOR GRANTING THE PETITION

I. THE DECISIONS OF THE STATE AND FEDERAL COURTS ARE IN DIRECT CONFLICT WITH THE PRECEDENTS ESTABLISHED BY THIS COURT REGARDING THE WEIGHT TO BE PROPERLY AFFORDED TO A SHOWING OF CONSPICUOUS STATISTICAL IMBALANCE IN TRADITIONALLY SEGREGATED JOB CLASSIFICATIONS

A. Decisions Of The State And Federal Courts Are In Direct Conflict With This Court's Decision In Johnson v. Transportation Agency, Santa Clara County, Calif. et al., 480 U.S. ___, 94 L.Ed. 615, 108 S.Ct. __ And In Principle With Other Decisions.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. states in pertinent part:

> "(a) Employers. It shall be an unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; . . ."

Title VII was designed to establish a color-blind and gender-blind workplace.[2/] In United Steelworkers AFL-CIO-CLC v. Weber, 443 U.S. 193 (1979) the Supreme Court observed the primary goal of Title VII was the intregation of blacks into the economic mainstream of American society. Id. at 202. Not only was the statute itself intended to be remedial, but

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2. In Johnson, Justice Antonin Scalia actually quoted from the language of Title VII--and praised its clear drafting. It said that no employer can discriminate based on race, color, religion, sex, or national origin or "limit, segregate or classify" its workers so as to deprive "any individual of employment opportunities."

Congress also hoped that Title VII would "create an atmosphere conducive to voluntary or local resolution of other forms of discrimination." H.R.Rep. No. 914, 88th Cong. 1st Sess., pt. 1, p.18 (1963), cited in Weber, 443 U.S. at 204.

In LaRiviere v. EEOC, 682 F.2d 1275 (9th Cir. 1982), Weber was applied to an affirmative action program implemented by a public employer to remedy long-standing male-female imbalance in the work force.

A Title VII plaintiff carries "the initial burden under the statute of establishing a prima facie case of racial [sex] discrimination. McDonnell Douglas v. Green, 411 U.S. at 802. Petitioner showed that sex was the likely reason for the denial of his job opportunity. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981). When petitioner meets this burden of proof, it "creates a rebuttable 'presumption that the employer unlawfully discriminated against' him." Aikens, 460 U.S. at 714, quoting Burdine at 255,

and shifts the burden to defendant to articulate some legitimate, nondiscriminatory reason for the actions that inspired the complaint. McDonnell Douglas, 411 U.S. at 802. Here, petitioner met his prima facie burden of proving sex discrimination by showing a conspicuous statistical imbalance of male secretaries in the mainstream and executive work force. Respondents failed to rebut this presumption.

In petitioner's opening brief filed in the Ninth Circuit on February 23, 1987 at pages 11, 12 and 35 (Exhibit I, R.T.) [App. 8a-10a] note that the Honorable Judge John L. Cole erred in summarily disregarding petitioner's showing of a conspicuous male-female imbalance in the Los Angeles County's secretarial work force.

In Weber, 443 U.S. 198 the exclusion of blacks from the work force was so pervasive as to warrant judicial notice. In this case, before your Honorable Court, the superior court

failed to take judicial notice as in Weber of petitioner's conspicuous statistical imbalance in his job classification and the fact that there were no male executive secretaries, by ruling it "could not properly draw the inference of discrimination on the basis of pure statistics." Johnson, 748 F.2d at 1313 points out that:

> "Statistics are extremely useful in showing conspicuous work force imbalance. We note particularly the difficulty that may confront an employer whose plan is intended to remedy discrimination resulting from societal norms. Some forms of discrimination are so subtle or so accepted that they defy proof other than by statistics."

Statistics, then, were petitioner's only means of proving discriminatory treatment particularly where, as here, he must overcome subtle, societal norms which perpetuate discrimination based on sex. Id.

Here, petitioner has suffered discriminatory treatment and has no remedy unless this Court grants review. According to the Ninth Circuit in Johnson, a conspicuous statistical

imbalance in the work force alone justifies the award of an employment remedy. Further, petitioner asserts that his promotion would not trammel the rights of other female secretaries, which the Johnson Court was concerned by. Petitioner is not only a member of a protected class, e.g. McDonald v. Santa Fe Trail Trans. Co., 427 U.S. 273, 280 & n.8 (1976): the fact that petitioner is a white male is irrelevant to his quantum of protection under Title VII; but is also the most qualified candidate to the executive secretarial positions.

In petitioner's case, the thematic and systematic parallels are strikingly identical to Johnson. In Johnson, respondent Diane Joyce was seeking to be promoted to a Road Dispatcher position where there were no females. Here, petitioner--a male secretary-- is seeking a promotion to an executive secretary position where there are none.

It is well settled that many occupations are stereotyped by sex. The secretarial field is one of them. Title VII of the Civil Rights

Act of 1964 has allowed great progress to be made for women to advance in male-dominated fields. See e.g. Johnson. The Fourteenth Amendment of the United States Constitution guarantees equal protection under the law such that similarly situated persons must be accorded similar treatment. See Confederated Band and Tribes of the Yakima Indian Nation v. Washington, 552 F.2d 1332, 1335 (9th Cir. 1977). The promise of equal protection necessarily extends to the application of the laws [see A.O.B. at 16 and 17]:

> " . . . . though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, materal to their rights, the denial of equal justice is still within the prohibition of the Constitution." Yick Wo. v. Hopkins, Cal. (1886) 6 S.Ct. 1064, 1072, 1073; 118 U.S. 356, 373, 374, 30 L.Ed. 220; United States v. Christopher, 700 F.2d 1253 at 1258 (9th Cir. 1982).
>
> "The purpose of the equal protection clause of the 14th Amendment of the United States Constitution and its counterpart clause

> in California Constitution Article I, Section 7, Subdivision (a) is to secure every person against intentional and arbitrary discrimination by state officials, whether brought about by the express terms of statute or by its improper enforcement by duly constituted state agents. The laws, including penal statutes, which invidiously discriminate, or which create arbitrary classification, violate the constitutional guarantees of equal protection, ..." Cotton v. Municipal Court, (1976) 59 C.A. 3d 601; 130 Cal.Rptr. 876.

The state, federal and court of appeal's decisions are not in accord with Johnson. Petitioner was denied his Constitutional rights by being denied a promotion based on sex, despite a showing of a conspicuous statistical imbalance in the secretarial work force.

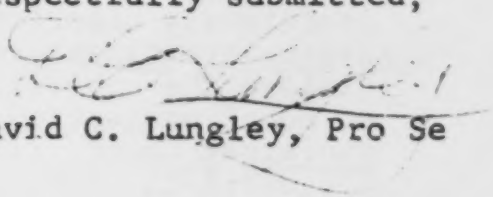
In summary, petitioner presented statistical evidence of a violation of Title VII, which the state and federal courts summarily dismissed. Petitioner asserts that such decisions are in conflict with established precedents, and thus seeks resolution of the issue and a remedy before

your Honorable Court.

CONCLUSION

For these various reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,



David C. Lungley, Pro Se

January 2, 1988

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AUG 28 1987

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID C. LUNGLEY, Plaintiff-Appellant, -vs- COUNTY OF LOS ANGELES; JAMES C. HANKLA, Chief Administrative Officer of the County of Los Angeles; MARTIN GOLDS, Defendant-Appellees.	CA No. 86-6152 DC No. CV-86-401-KN M E M O R A N D U M*

Appeal from the United States District Court for the Central District of California
Hon. David V. Kenyon, District Judge, Presiding
Submitted July 16, 1987** - San Francisco, CA

BEFORE: GOODWIN, KENNEDY AND CANBY, CIRCUIT JUDGES

David Lungley appeals pro se the district court's dismissal of his Title VII action and pendent state claims. The district court held that federal adjudication of Lungley's 1984 gender discrimination claims was barred by a

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

* * (Footnote continued)

prior state court decision on state discrimination charges, and that Lungley failed to exhaust administrative remedies in connection with claims of earlier acts of discrimination that were not the subject of the state court action. We affirm.

We agree with the district court that collateral estoppel bars Lungley's attempt to his 1984 gender discrimination charges. Essentially identical issues were full determined by the Superior Court of Califo ia when it denied Lungley's Petition for Writ of Mandate against Los Angeles County and its Civil Service Commission. See Trujillo v. County of Santa Clara, 775 F.2d 1359, 1366, 1369 (9th Cir. 1985); People v. Sims, 32 Cal 3d 468, 484, 186 Cal.Rptr. 77, 87, 641 P.2d 321, 331 (Cal. 1982); Dakins v. Board of Pension Commissioners, 134 Cal.App. 3d 374, 385, 184 Cal.Rptr. 576, 581 (Cal.Ct.App.

(Footnote Continued from First Page)
** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Circuit Rule 34-4.

1982), cited in Clemente v. State of California, 40 Cal. 3d 202,222, 219 Cal. Rptr. 445, 457, 707 P.2d 818, 830, (Cal. 1985); Bleeck v. State Board of Optometry, 18 Cal. App. 3d 415, 429, 95 Cal. Rptr. 860, 869 (Cal. Ct. App. 1971). Appellant contends, however, that his claim of gender discrimination resulting from the October 1984 promotion of Carolyn Washington was not at issue in the state court and Civil Service Commission proceedings. Reviewing the record, we cannot agree. See Appellee's Supplemental Exerpt of Record at 37 (Lungley's objection to manipulation of certification procedures and Washington's "almost immediate promotion"); 48 (incorporating by reference Lungley's objections to Civil Service Commission's findings and proposed decision, and Civil Service hearing transcript); Appellant's Br. at 40-50, 46 (transcript of Civil Service Hearing testimony and statement of hearing officer regarding appointment and promotion of Carolyn Washington). Thus, the Superior Court's final decision on the ////////////

merits of appellant's claims under anti-discrimination laws analogous to Title VII bars him from relitigating his charges of sex-based discrimination in hiring in 1984. Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982); Hirst v. State of California, 770 F.2d 776, 778 (9th Cir. 1985).[1]

We also agree that Lungley failed to exhaust administrative remedies regarding his allegations of discriminatory acts occurring from 1972 to 1982. 42 U.S.C. Sec. 2000e-5; see Love v. Pullman, 404 U.S. 522, 523 (1972). These charges are not "reasonably related" to Lungley's allegations in his EEOC charge, that the County denied him the opportunity to interview for particular positions in 1984. See Serpe v. Four-Phase Systems, Inc. 718, F.2d 935, 937-8 (9th Cir. 1983); Ramirez v. National

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[1] Lungley's contention that his right to jury trial was violated fails for at least two reasons. He has no right to jury trial of an issue upon which he is collaterally estopped. Parklane Hosiery Co v. Shore, 439 U.S. 322, 333-37 (1979). He also has no right to jury trial of a Title VII claim. Slack v. Havens, 522 F. 2d 1091, 1094 (9th Cir. 1975).

Distillers & Chemical Corp., 586 F.2d 1315, 1320 (9th Cir. 1978); Obichon v. North American Rockwell Corp., 482 F.2d 569, 571 (9th Cir. 1973). Dismissal of the claims for earlier occurrences was therefore appropriate. Serpe, 718 F.2d at 936; Brogan v. Wiggins School District, 588 F.2d 409, 411 (10th Cir. 1978); see United Air Lines, Inc. v. Evans, 431 U.S. 553, 555 (1977); Blank v. Donovan, 780 F.2d 808, 809 (9th Cir. 1986).

Finally, the district court appropriately dismissed Lungley's pendent state-law claims because it dismissed his federal claims before trial. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Jones v. Community Redevelopment Agency, 733 F.2d 646, 651 (9th Cir. 1984).

The district court's order of dismissal is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
OCT 7 1987

DAVID C. LUNGLEY, Plaintiff-Appellant, -vs- COUNTY OF LOS ANGELES; JAMES C. HANKLA, Chief Administrative Officer of the County of Los Angeles; MARTIN GOLDS, Defendant-Appellee.	CA No. 86-6152 DC No. CV-86-401-KN ORDER

BEFORE: GOODWIN, KENNEDY AND CANBY, CIRCUIT JUDGES

The petition for rehearing is denied.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 86 HON. JOHN L. COLE, JUDGE

DAVID C. LUNGLEY, Petitioner, v. COUNTY OF LOS ANGELES, et al., Respondent.	NO. C 556 346

REPORTER'S TRANSCRIPT

August 28, 1985

APPEARANCES:

For Petitioner: IN PROPRIA PERSONA

For Respondent: DE WITT W. CLINTON
COUNTY COUNSEL
BY: ALBERT KELLY, DEPUTY
648 Hall of Administration
Los Angeles, California 90012

Reported by: LEWIS S. HOLTON
C.S.R. No. 1212
Official Reporter

EXHIBIT I
(APPELLANT'S OPENING BRIEF)

.....

MR. LUNGLEY: To approve the minutes.

THE COURT: Well, in any event, I will get to the merits in this case. I have enough doubt about the Statute of Limitations, I am not going to predicate my ruling on that.

Mr. Lungley, your case is based on your claim that the County discriminates against male secretaries. It's based almost a thousand percent on statistical information that there are however many hundreds of femals secretaries in the County service, and nine hundred and something --

MR. LUNGLEY: Nine hundred and twenty.

THE COURT: Whatever it was, and that there are only a dozen male secretaries, or some number like that, and that in the senior ranks there are only 200-something senior ranked secretaries, only one of them a male secretary. That is your case, and the issue legally is whether those statistics would support a conclusion in the court's independent judgment that the County was engaged in some form of

discrimination against male secretaries.

Now, in this instance the record shows that one of the two examinations or interviews, I should say, for the promotional jobs was conducted entirely within the Department of Personnel, because it was for a secretary in that department, and they didn't go outside the department at all, and the other job was one where you were called to come in for an interview, a message was left with somebody, I don't think the record shows me whether you got the message or not, but it certainly shows you did not respond.

Furthermore, the person, I forget his name, for .....

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.....

MR. LUNGLEY. It also does state, and the --that there was a list, they said it was strictly for the Department of Personnel, and the list in the transcript said there were two outside people interviewed and I wasn't one of them, and I was number one and some of the

people --

THE COURT: I understand the basis for your complaint, I understand all the facts but, as I say, just on the basis of the numbers by themselves, the pure statistics, I don't think I could properly draw the inference of discrimination against you, particularly in light of the direct testimony, and I do see no basis for denying or disbelieving the testimony that you were called once and the phone didn't ring, and you were called a second time and you were not there but that a message was left with somebody, and I don't think the name of the person the message was left with was given, but I cannot on this basis find enough to make the rather distinctive ruling of discrimination by the County.

When the evidence is there, I'll make it. I have made it in other cases and other circumstances, particularly involving an architect, but I don't see it here.

The application is denied. You prepare

a judgment, Mr. Kelly.

MR. KELLY: Yes, Your Honor. Thank you.

(The proceedings were concluded.)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

-000-

HONORABLE DAVID V. KENYON, JUDGE PRESIDING

-000-

DAVID C. LUNGLEY, PLAINTIFF, COUNTY OF LOS ANGELES, JAMES C. HANKLA, CHIEF ADMINISTRATION OFFICER OF THE COUNTY OF LOS ANGELES; AND MARTIN GOLDS; DEPUTY DIRECTOR, DEFENDANTS.	NO. CV-86-0401-KN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JUNE 2, 1986

PATRICIA A. CHILES.
OFFICIAL COURT REPORTER
412 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA
(213 680-4344

APPELLANT'S OPENING BRIEF EXCERPT
FROM CLERK'S RECORD - PAGES 19-22

.....

SECOND AND THIRD CAUSES OF ACTION ARE DISMISSED WITHOUT PREJUDICE.

THE DEFENDANT, PLEASE, IS TO PREPARE A PROPOSED ORDER BY JUNE 6, 1986.

MR. LUNGLEY: THANK YOU, YOUR HONOR.

MR. KELLY: THANK YOU, YOUR HONOR.

MR. LUNGLEY: YOUR HONOR, MAY I SAY SOMETHING?

THE COURT: YES, SIR.

MR. LUNGLEY: THERE WAS SOMETHING WRONG THAT YOU READ THERE.

THE COURT: WHAT WAS THAT?

MR. LUNGLEY: YOU SAID THAT IT WAS COLLATERALLY ESTOPPED FROM MANAGEMENT SECRETARY 5. MANAGEMENT SECRETARY 5 DID NOT GO FORWARD. IT NEVER WENT FORWARD TO THE COURTS AS YOU SAID IT DID.

THE COURT: YES.

MR. LUNGLEY: IN MY OPPOSITION ON PAGE 6 THE MANAGEMENT SECRETARY 5 WAS NEVER LITIGATED nor subject of ~~OR WAS IT SUBSEQUENT~~ CIVIL SERVICE COMMISSION HEARING.

THE COURT: COUNSEL, DO YOU AGREE WITH THAT?

MR. KELLY: NO, I DO NOT, YOUR HONOR. THE CIVIL SERVICE COMMISSION DID TAKE EVIDENCE ON THAT PARTICULAR ISSUE. AND MR. LUNGLEY'S ATTORNEY BEFORE THE CIVIL SERVICE COMMISSION DEALT WITH THE ISSUE IN HIS BRIEF. I BELIEVE THAT'S PART OF THE EXHIBITS THAT WE ATTACH TO THE MOTION.

THE COURT: I'LL TAKE ANOTHER LOOK AT THAT. I WILL ASK COUNSEL TO PREPARE THE ORDER. I'LL LOOK AT THAT TODAY, AND IF THERE'S ANY CHANGES WE'LL NOTIFY BY MINUTE ORDER.

MR. KELLY: THANK YOU, YOUR HONOR.

--000-

CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

IN THE MATTER OF THE NON-APPOINTMENT OF:

DAVID C. LUNGLEY

TO CERTAIN EXECUTIVE SECRETARY POSITIONS, ON HIS CLAIM OF DISCRIMINATION BASED ON SEX.

Case No. --------

REPORTER'S TRANSCRIPT

MONDAY, OCTOBER 29, 1984

522 HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

BEFORE: ROBERT D. STEINBERG, HEARING OFFICER

CAMERON REPORTING SERVICE
Certified Shorthand Reporters
1625 W. Olympic Blvd., Suite 826
Los Angeles, CA 90015
(213) 387-9630

REPORTED BY: TERRI MILLER
C.S.R. NO: ----

EXHIBIT IV
(APPELLANT'S OPENING BRIEF)

A P P E A R A N C E S:

FOR THE APPELLANT: RICHARD J. RENYA, ADVOCATE
LOCAL 660, SEIU, AFL-CIO
950 W. WASHINGTON BLVD.
LOS ANGELES, CA 90015

FOR THE RESPONDENT: RICHARD RAYMOND,
DIVISION CHIEF

TOM DAWES, PERSONNEL
OFFICER

ROBERT D. STEINBERG
HEARING OFFICER

TERRI MILLER
OFFICIAL REPORTER

.....

A No. It was rating from words. That is the exam that they have open continuously.

Q Did you submit an appraisal of promotability?

MR. DAWES: I object. The management secretary four is a position at issue not management secretary five.

The senior secretary five, management secretary four, which we stipulated at the beginning, the two positions that are at issue. Those two appointments in June and in April of this year. Not what happened in October.

THE HEARING OFFICER: It seems to me that there could be some connection back. I don't know. I honestly don't know what I am going to make from it.

But it seems to me that it can be connected. The last question was and the last answer that I have in my record was -- did I hear you use the word "continuous examination"? .....

No: _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

DAVID C. LUNGLEY,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,

Respondents.

I, DAVID C. LUNGLEY, Pro Se, hereby certify that on this second day of January 1988 three copies of the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to counsel for respondents:

Albert D. Kelly
Senior Deputy County Counsel
Office of the County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Executed on January 2, 1988 at Los Angeles, California.

D C Lungley

DAVID C. LUNGLEY, Pro Se
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